

HOULTON BAND OF	:	Order Docketing and Dismissing Appeal
MALISEET INDIANS,	:	or Alternatively Denying Petition for
Appellant	:	Reconsideration
	:	
v.	:	
	:	Docket No. IBIA 97-47-A
AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 20, 1996

The Board of Indian Appeals (Board) has received a notice of appeal from an October 3, 1996, letter written by the Acting Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA). The named appellant is the Houlton Band of Maliseet Indians (Band). For purposes of this decision, the Board assumes that the appeal has in fact been filed by the Band itself, rather than by a faction of the Band, and that it has been duly authorized by the Band's governing body.

The Area Director's October 3, 1996, letter was written in response to the Board's request for information in Tomah v. Acting Eastern Area Director, which was decided at 30 IBIA 92 (1996). As part of its consideration of that appeal, the Board requested information from the Area Director concerning an election which the Band allegedly held in December 1995. The Area Director responded that BIA had not been informed of the election until May 1996, and that, on June 7, 1996, BIA notified the Band that BIA would make no determination as to the legality of the December 1995 election because such determinations were within the province of the tribe itself. The October 3, 1996, letter reiterated the list of persons BIA recognized as being the Band's elected leadership. Those persons were the same as those involved in Tomah.

The October 3, 1996, letter was a filing in a case pending before the Board. As such, it is not itself an appealable decision. Therefore, this appeal from the Area Director's October 3, 1996, letter is dismissed.

Giving the Band the benefit of every doubt, the Board also treats this notice of appeal as a petition for reconsideration of Tomah, filed on behalf of Tribal Chairman Clair Sabbatis and others. 1/ 43 CFR 4.315 (a) provides that petitions for reconsideration will be granted "only in extraordinary circumstances." The Band argues that its general membership recognizes different people as its council members than does BIA. The Band states that

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1/ In Tomah, Sabbatis et al. submitted filings purportedly on behalf of the Band. The Board construed the filings as made on behalf of the individuals.

the council members it recognizes are based on a voluntary resignation; the removal of four individuals, the appellants in Tomah, from the council on October 1, 1995; and the election of a new tribal council on December 30, 1995, to fill the vacancies created by the October 1, 1995, recall election.

In Tomah, the Board held

that [Tribal Chairman] Sabbatis failed to file a timely notice of appeal. Therefore, because there is no appeal before the Board challenging that part of the Area Director's October 4, 1995, decision declining to recognize the results of the October 1, 1995, recall election, the Board does not consider any issue relating to the attempted recall of appellants [Tomah, et al.], or any subsequent election the Band may have held, even though the parties have addressed those matters.

(30 IBIA at 96). When no timely notice of appeal was filed from that part of the Area Director's decision declining to recognize the results of the October 1, 1995, recall election, that part of the decision became final for the Department.

The Band attaches to its notice/petition a copy of the brief filed by Sabbatis et al. in Tomah. Because these arguments were addressed in Tomah, the Board finds no extraordinary circumstances justifying reconsideration here, and denies the Band's request to the extent it can be considered a petition for reconsideration of Tomah.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Eastern Area Director's October 3, 1996, letter is docketed and dismissed. Alternatively, the petition for reconsideration of Tomah is denied.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge